

NOTES:

Draft bill S. 529 as voted out of Joint Committee on Environment, Natural Resources and Agriculture on December 12, 2005.

(Page numbers inserted by CZM for reference.)

S. 529

AN ACT RELATIVE TO OCEANS

The general court finds and declares that:

- (a) Coastal population growth and rapid advances in technology and commerce have led to a significant increase in demands on the ocean resources of Massachusetts;
- (b) Governance structures for ocean resources management have historically been focused on single resources or activities, and public decisions about whether to allow certain activities in the commonwealth's ocean waters have occurred through a reactive and fragmented approach;
- (c) Massachusetts' ocean management policy must be adjusted to meet evolving human needs and values, emerging technologies, and evolving understanding and knowledge of ocean ecosystems in order to fulfill the Bay State's public trust responsibilities;

(d) It shall be the policy of the commonwealth that stewardship of the commonwealth's ocean waters shall be carried out through an ocean management plan that protects, maintains, and restores the abundance and diversity of native species and habitats and the health and productivity of coastal and marine ecosystems in order to fulfill the ecological, economic, educational, social, cultural, nutritional, recreational, and other requirements of present and future generations in a sustainable manner.

(e) The Massachusetts Ocean Management Task Force has studied and made recommendations, based upon a public participation process, for improved stewardship of the commonwealth's ocean resources.

SECTION 2. Section 4A of chapter 21A of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by inserting before the word "federal" in line 15 the words: - Massachusetts Oceans Act, section 4C, and of the.

SECTION 3. Chapter 21A is hereby further amended by inserting after section 4B the following section: —

Section 4C.

(a) The ocean resources of the commonwealth, within the ocean management planning area described in this section, shall be under the oversight, coordination and planning authority of the secretary of environmental affairs, in regular consultation with the members of the ocean management advisory board and all other relevant agencies, on

behalf of the people of the commonwealth pursuant to the policy, planning and coordination authority vested in the secretary by sections 1 through 6 of this chapter. Such oversight, coordination and planning authority shall be exercised through the promulgation of an ocean management plan, which shall be defined as a document including maps, illustrations and other media of communication setting forth, among other things, the commonwealth's goals, policies and standards to ensure effective state stewardship of the living and non-living marine resources held in trust for the benefit of the public. Such stewardship of the commonwealth's ocean resources shall be carried out in accordance with sound management practices that protect the public trust, value biodiversity, protect special, sensitive or unique estuarine and marine life and habitats, respect the interdependence of ecosystems, coordinate uses that cross international, federal, state and local jurisdictions, foster sustainable uses that capitalize on economic opportunity without significant detriment to the ecology or natural beauty of the ocean, use best available information and expertise, encourage public participation in decision-making and adapt to our evolving knowledge and understanding of the ocean environment.

(b) The geographic area subject to an ocean management plan may include any waters and associated submerged lands of the ocean, including the seabed and subsoil, lying between the low water mark and the seaward boundary of the commonwealth. An ocean management plan also may address activities in adjacent waters and, to the maximum extent consistent with federal law, shall apply to activities occurring in

adjacent federal waters that are functionally connected or otherwise related to the management of resources within the ocean management planning area.

(c) (1) The secretary shall develop, adopt, and implement an ocean management plan. An ocean management plan shall include maps, illustrations and other media of communication setting forth, among other things, the commonwealth's goals, policies and standards to ensure effective state stewardship of the living and non-living marine resources held in trust for the benefit of the public.

(2) In preparing an ocean management plan, the secretary shall take into account the existing natural, social, cultural, historic and economic characteristics of the planning area, together with the interests of the commonwealth in: protecting marine resources and their associated habitats; preserving and enhancing public access; protecting biodiversity and ecosystem health; addressing climate change and sea-level rise; supporting the needed infrastructure for the economy and quality of life for the citizens of the Commonwealth; and fostering sustainable uses that capitalize on economic opportunity without significant detriment to the ecology or natural beauty of the ocean; developing and maintaining sound management practices that coordinate uses that cross international, federal, state and local jurisdictions, encourage public participation in decision-making, use the best available information and expertise and adapt to our evolving knowledge and understanding of the ocean environment.

(3) There shall be an ocean management advisory board to assist the secretary in the development of an ocean management plan. Said board shall consist of 19 members: 2 members of the senate to be appointed by the president of the senate; 2 members of the house of representatives to be appointed by the speaker of the house of representatives; the commissioners of the department of fish and game, the department of environmental protection, the department of conservation and recreation, and the department of telecommunications and energy, or their designees; the directors of the office of coastal zone management, and the division of marine fisheries, or their designees; 1 representative of commercial fishing interests, to be appointed by the secretary; 1 representative of recreational fishing interests, to be appointed by the secretary; 2 representatives of environmental organizations, to be appointed by the secretary; 1 representative of an academic institution, to be appointed by the secretary; 1 representative of a non-fishing ocean-dependent industry, to be appointed by the secretary; 1 mayor or member of the city council or board of selectmen of a coastal municipality, to be appointed by the secretary; 1 director of a regional planning agency, to be appointed by the secretary; and, 1 citizen of Massachusetts, to be appointed by the secretary.

(4) There shall be an ocean science advisory council to assist the secretary of environmental affairs in the development of a baseline assessment, subject to the provisions of subsection (e)(1) of this section, and any other scientific information necessary for the development of an ocean management plan. Said council shall consist of 9 members, to be appointed by the secretary, including 3 scientists from academic

institutions, 3 scientists from private nonprofit organizations, including 1 scientist designated by the Massachusetts Fishermen's Partnership, and 3 scientists from government agencies with demonstrated technical training and experience that have been drawn from the fields of marine ecology, geology, biology, ichthyology, mammalogy, oceanography and other related ocean science disciplines.

(d) Upon adoption of an ocean management plan, no structure, uses or activities that could significantly alter the ocean resources of the geographic area established in accordance with this section may occur unless such activities conform to all applicable provisions of the ocean management plan. All offices and departments of the executive office of environmental affairs and all other agencies, departments, divisions, units, commissions, boards and authorities of the commonwealth shall enforce laws and regulations within their jurisdiction, conduct regulatory reviews, administer programs, disburse funds, perform or supervise construction activities, and otherwise conduct their activities in a manner that ensures conformance with the applicable provisions of an ocean management plan and this section.

(e) Development, implementation, and enforcement of an ocean management plan as coordinated by the secretary, shall include, but not be limited to, the following elements:

- (1) Setting a baseline assessment of the commonwealth's ocean resources and resource use, in consultation with the ocean science advisory council, that

incorporates the best available engineering applications and scientific understanding of marine and ocean resources, including the identification of special, sensitive or unique estuarine and marine life and habitats, through research, mapping, monitoring and other data, public and agency input and other relevant natural, infrastructure, social, cultural, historic and economic planning information that will serve as the basis for evaluating alternatives and choosing courses of action;

- (2) Establishing an outreach and participation program which shall include: early and continuing interaction with the public, the business sector, other interested groups and local, state, regional and federal officials; an opportunity for notice of the contents, public comment and a public meeting or meetings at the local and regional levels, coordinated through the Massachusetts association of regional planning agencies, on a proposed ocean management plan; and regular consultation with the ocean management advisory board, the ocean science advisory council, the energy facilities siting board, the executive office of public safety, the highway department, the division of energy resources, the department of telecommunications and energy, the port authority, the department of agricultural resources, and other state and federal agencies having jurisdiction over resources or activities within or affecting the ocean management planning area, in order to achieve maximum feasible compatibility with the plans, programs or projects for which such departments, divisions, boards and other agencies are responsible. A

summary of this participation program shall be included in an ocean management plan;

- (3) Identifying management measures, including but not limited to, setting performance standards, mitigation requirements and use limitations, as may be applicable to specific geographic areas, to be developed in a manner consistent with applicable state statutes and regulations that control or otherwise affect development or other ocean use in the planning area. These management measures shall be compatible, to the maximum extent feasible, with all applicable plans, programs and projects for which the respective state agencies are responsible. The division of marine fisheries, pursuant to chapter 130 or any other general or special law, shall have sole responsibility for developing and implementing any fisheries management plans and fisheries regulations that are determined to be necessary by said division based on the best available scientific information. Management of marine fisheries shall comply with all rules and regulations of the division of marine fisheries or federal or interstate fishery management plans, issued pursuant to chapter 130 or any other general or special law, and shall be integrated, to the maximum extent possible, with an ocean management plan. Management of waterfowl hunting shall comply with the rules and regulations of the division of fisheries and wildlife, issued pursuant to chapter 131 or any other general or special law, and shall be integrated, to the maximum extent possible, with an ocean

management plan. Nothing contained in this section shall be construed to prohibit the transiting of recreational boats in Massachusetts ocean waters;

- (4) Implementing a specific strategy to ensure effective application of the identified management measures within the planning area in question. Implementation arrangements may include, as appropriate, memoranda of understanding or other instruments of agreement to ensure coordination between the secretary and all relevant state agencies;
- (5) Establishing a time period during which an ocean management plan is to remain effective and a proposed date, not to exceed 5 years from the date of plan adoption, on which re-evaluation of the plan will commence for purposes of renewal and amendment. The reevaluation process shall include, but not be limited to, an opportunity for public comment and a public meeting or meetings. An ocean management plan shall remain in effect until a renewed or amended ocean management plan is adopted; and
- (6) Creating other such elements as may be considered appropriate by the secretary of environmental affairs to serve the purposes of this section.

(f) The secretary shall give notice of, and provide interested parties with the opportunity to present data, views or arguments for a period of at least 60 days in regard to a proposed ocean management plan or any proposed amendment thereto or renewal

thereof in writing in accordance with section 3 of chapter 30A, and shall make such proposed amendments or plans available for a public review and comment period through notice in the Environmental Monitor. At the conclusion of such public process, which shall include one or more public meetings at the local or regional levels, and after consideration of public comments received during the public comment period, the secretary of environmental affairs may adopt an ocean management plan or any amendments thereto, and notice thereof shall be published in the next available edition of the Environmental Monitor and the Massachusetts Register.

(g) The secretary of environmental affairs shall reconsider the decision to adopt an ocean management plan, any portion thereof or any amendment thereto only if information which has been overlooked or misapprehended requiring such reconsideration is presented in a written petition submitted within 21 days of the secretary's decision by the planning representative of a local government, any state agency or 10 or more citizens of the commonwealth. Such petition for reconsideration must include a clear and concise statement of the specific objections to the secretary's decision and the relief sought, including any specific changes that are proposed for consideration. The secretary shall respond in writing to such petition within 21 days of the close of the petition period and shall set forth the basis for such response including the reasons for any modification of the decision. The secretary's decision shall be final 21 days after it is issued should there be no requests for reconsideration timely filed. Decisions subject to request for reconsideration shall be final upon a date specified by the secretary in the response to the request for reconsideration, and in any case not longer

than 21 days after the response. When the secretary's decision is final, notice thereof shall be published in the next available edition of the Environmental Monitor and the Massachusetts Register.

(h) Judicial review of the secretary's approval of an ocean management plan or any amendment thereto shall be as provided in section 7 of chapter 30A. Any such action must be commenced within 30 days of the publication in the Massachusetts Register of notice of the ocean plan, or if a request for reconsideration is filed, within 30 days of publication of notice of the secretary's decision on the request for reconsideration. No such action may be commenced unless the matter complained of was raised by that party in writing in the public comment period on the ocean plan; provided, however, that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have raised it during the public comment period.

(i) Notwithstanding any other provisions of this section, the following activities are prohibited in the geographic area described in subsection (b):

- (1) construction or operation of offshore or floating electric generating stations in areas designated as an ocean sanctuary by section 13 of chapter 132A, except
 - i. on an emergency and temporary basis for the supply of energy; or
 - ii. for small scale renewable energy systems, as defined by the ocean management plan, in areas other than the Cape Cod ocean sanctuary, established by section 13 of chapter 132A, provided that the small

scale renewable energy system is consistent with an ocean management plan;

(2) dumping or discharging commercial, municipal, domestic or industrial wastes, in areas designated as an ocean sanctuary by section 13 of chapter 132, except as may be allowed pursuant to sections 16 or 16A through 16F of chapter 132A and its implementing regulations, as may be amended;

(3) incineration of solid waste material or refuse on, or in vessels moored or afloat;

(4) extraction of any stone, sand, gravel or other minerals, gases or oils from the seabed or subsoil, except for the following: dredging for navigation purposes; shore protection or beach restoration, or for facilities and activities undertaken or required by a public agency for the purposes of dredging, decontamination, response actions, capping or disposal of polluted aquatic sediments, if consistent with any applicable provisions of an ocean management plan;

(5) building or operation of commercial advertising; and

(6) in the area designated as the Cape Cod ocean sanctuary by section 13 of chapter 132A, the building or long-term mooring of any structure on the seabed or subsoil except as allowed in subsection (j)(1) and (4)-(7).

(j) In all areas within the geographic area described in subsection (b), other than the area designated as the Cape Cod ocean sanctuary by section 13 of chapter 132A, projects, not prohibited by subsection 4(i) above, are allowable, provided that such projects have met all applicable requirements of other local, state, and federal laws and regulations, and are consistent with an ocean management plan. Those projects include, but are not limited to:

- (1) beach nourishment, channel and shore protection structures, and maintenance dredging for navigational purposes;
- (2) the operation, maintenance, repair or construction of infrastructure facilities used in the transmission or distribution of electricity, natural gas, or telecommunications services, including pipelines, cables and conduits, except in the area designated as the Cape Cod ocean sanctuary by section 13 of chapter 132A;
- (3) industrial liquid coolant discharge and intake systems, except in the area designated as the Cape Cod ocean sanctuary by section 13 of chapter 132A;
- (4) facilities for molluscan bivalve shellfish propagation or enhancement;

- (5) moorings, floats and rafts held by bottom anchor for the purpose of vessel docking or mooring, and ramps attached thereto;
- (6) docks, piers, wharves or other filled or pile-supported structures contiguous with the existing land mass;
- (7) environmental restoration or mitigation activities required by certificate of the secretary of environmental affairs;
- (8) dumping or discharging commercial, municipal, domestic or industrial wastes, in areas not designated as an ocean sanctuary by section 13 of chapter 132A.

(k) Projects that have filed a chapter 91 license application and received a determination of completeness from the department of environmental protection or, if the project is subject to review pursuant to section 61 of chapter 30, has received a certificate of adequacy regarding a Draft Environmental Impact Report from the Secretary, shall be governed by the ocean management plan in effect at the time of filing.

(l) There shall be established and set up on the books of the commonwealth a separate fund to be administered by the secretary, as trustee, in consultation with the department of environmental protection, to be known as the Ocean Resources and Waterways Trust Fund. There shall be credited to such fund: any fees or other amounts of any type

collected pursuant to chapter 91; applicable compensation or mitigation for ocean development to be used for the purposes of ocean resource enhancement or restoration; any income derived from the investment of amounts credited to the fund; and any appropriation, grant, gift or other contribution explicitly made to the fund. Amounts credited to the fund shall be used, without further appropriation, solely for the purposes of the administration and implementation of permitting licensing compliance and enforcement of chapter 91 by the department of environmental protection and for the purposes of policy oversight, management planning, environmental enhancement, restoration and coordination of ocean resources by the secretary pursuant to this section, including the cost of employees or consultant services necessary to implement these requirements. Notwithstanding the provisions of any general or special law to the contrary, amounts expended from the Ocean Resources and Waterways Trust Fund shall be exempt from fringe and indirect cost charges pursuant to chapter 29 of the General Laws.

(m) The secretary, in consultation with the department of environmental protection, the department of conservation and recreation, and the division of marine fisheries, is hereby authorized and directed to examine the establishment or renegotiation of fees, licenses, permits, rents, leases and the adjustment or development of other revenue sources for the purposes of funding ocean resource enhancement or restoration through the Ocean Resources and Waterways Trust Fund.

(n)The secretary may promulgate such regulations to implement, administer and enforce this section.

SECTION 4. Section 12A of chapter 132A of the General Laws, as so appearing is hereby amended by adding the following sentence:- This section and section 12C, section 14, section 15, section 16 and section 18 shall cease to have any effect upon the adoption of an ocean management plan pursuant to section 4C of chapter 21A. In the case of any inconsistencies among the requirements of section 15 and 16 of chapter 132A and section 4C(i) and (j) of chapter 21A during the transition period, the provisions of section 4c(i) and (j) of chapter 21A shall control.

SECTION 5. Section 12B of said chapter 132A, as so appearing, is hereby amended by striking out, in line 3, the words “’Act’, the Massachusetts Ocean Sanctuaries Act”.

SECTION 6. Said Section 12B of said chapter 132A , as so appearing, is further amended by striking out, in lines 13-14 and 15, the words “environmental management” and inserting in place thereof the following words: — environmental protection.

SECTION 7. Section 16A of said chapter 132A, as so appearing, is hereby amended, in lines 1 and 7 by striking out the words “section fifteen” and inserting in place thereof the following words: — section 4C(i)(2) of chapter 21A.

SECTION 8. Any project that, prior to the date of approval of the first ocean management plan as authorized by section 4C of chapter 21A, has 1) filed a chapter 91 license application and received a written determination of completeness by the department of environmental protection; or 2) if the project is subject to review pursuant to section 61 of chapter 30, received a certificate of adequacy regarding a Final Environmental Impact Report from the Secretary, or 3) if the project is subject to jurisdiction of the energy facilities siting board, received both a final decision from the energy facilities siting board and a certificate of adequacy regarding a Draft Environmental Impact Report from the Secretary, shall not be subject to the requirements of section 4C of chapter 21A. Such projects not subject to section 4C of chapter 21A must comply with sections 12A through 16F and section 18 of chapter 132A as they were in effect immediately prior enactment of section 4C of chapter 21A.

SECTION 9. The secretary of environmental affairs shall report annually to the joint committee on environment, natural resources and agriculture identifying management measures established and the progress made in creating an ocean management plan pursuant to section 4C of chapter 21A, until such time as a plan is first adopted.

SECTION 10. The secretary of environmental affairs shall develop, adopt, and implement an ocean management plan within 24 months of the effective date of section 4C of chapter 21A. Upon adoption, an ocean management plan shall be formally incorporated into the Massachusetts coastal zone management program as referenced in section 4A of chapter 21A.

SECTION 11. The secretary of environmental affairs shall report to the general court recommendations concerning the establishment of fees, licenses, permits, rents, leases and the adjustment or development of other revenue sources, as authorized by subsection (m) of section 4C of chapter 21A, by submitting a report, including any proposed legislation, to the joint committee on environment, natural resources and agriculture and the house and senate committees on ways and means within 1 year of the passage of section 4C of chapter 21A.